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June 14, 2012

Via Electronic Mail commentletters@waterboards.ca.gov

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street
P.O. Box 100
Sacramento, CA 95812-0100



Re: 6/19/2012 BOARD MEETING (Consideration of a proposed Resolution to Amend Resolution No. 2011-0005 to Allow California Environmental Quality Act Cost Recovery Authority to be Used for Water Quality Certification-Related Actions.)

Dear Ms. Townsend:

This letter is being submitted on behalf of the Petitioners in the various cases challenging the State Water Resources Control Board's (SWRCB) annual water right fees. The SWRCB is currently considering adopting Resolution 2012-XXXX, amending Resolution 2011-0005. Resolution 2011-0005 authorized the Executive Director to enter into contracts to hire environmental consultants to complete work required by the California Environmental Quality Act (CEQA) for water right actions. When Resolution 2011-0005 was adopted at the SWRCB's February 1, 2011 meeting, several interested parties expressed concern over the proposal to borrow funds from the Water Right Fund to pay for any CEQA work. The written comments that were submitted at that time and the concerns raised at the February 1, 2011 meeting regarding Resolution 2011-0005 are incorporated herein.

Through Item 3, SWRCB staff is recommending an amendment that would allow similar contracts for 401 Water Quality Certification matters. The majority of funds deposited in the Water Right Fund are collected from existing water right holders. Moreover, SWRCB staff has, on numerous occasions, indicated that the 401 Water Quality Certification program was completely self-sufficient. With this in mind, it is not appropriate to use funds derived from annual water right holders to fund CEQA work for 401 Water Quality Certifications. This is particularly true when there is no guarantee that any funds expended on CEQA work will be repaid to the Water Right Fund.

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To the extent that the SWRCB needs to ensure adequate and timely CEQA work is completed, the SWRCB should require an applicant for a 401 Water Quality Certification to provide up-front funding for any necessary CEQA work or, in the alternative, to post a bond to ensure all costs are covered.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel Kelly', with a long horizontal flourish extending to the right.

Daniel Kelly

DK:yd